09 1189

No. _____

Supreme Court, U.S.
FILED
MAR 30 2010
OFFICE OF THE CLERK

In The

Supreme Court of the United States

SATYA WATI,

Petitioner,

vs.

ERIC H. HOLDER, JR.,
ATTORNEY GENERAL OF THE UNITED STATES,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

STEPHEN SHAIKEN, ESQ.
Member, U.S. Supreme Court Bar
LAW OFFICES OF STEPHEN SHAIKEN
170 Columbus Avenue, Suite 100
San Francisco, CA 94133
Telephone: (415) 248-1012
Fax: (415) 248-0019
email:
stephenshaikenesq@shaikenlaw.com
Attorney for Petitioner

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1.) In assessing a motion to reopen based on new facts and country circumstances, may the circuit court or Board rely on a prior adverse credibility finding when the new claims are not dependent upon the applicant's credibility?

2.) Was petitioner's right to due process of law violated where the Board and the circuit court ignored precedent law on the persecution of Indo-Fijians and found to the contrary?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iv
INTRODUCTION	1
STATEMENT OF BASIS FOR JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS	3
INTRODUCTION AND STATEMENT OF THE CASE	4
IMMIGRATION JUDGE'S DECISION AND FACTUAL FINDINGS	5
A. Relevant Evidence	5
B. IJ Decision	7
BIA DECISION ON DIRECT APPEAL	7
BIA DECISION ON MOTION TO REOPEN	8
REASONS FOR GRANTING CERTIORARI	8
ARGUMENT	9
I. Certiorari Should Be Granted To Establish When If Ever A Prior Adverse Credibility Finding May Be The Basis For Denying A Motion To Reopen Based Upon Changed Country Conditions, Particularly As The Changed Circumstances Applies To A CAT Claim	9

TABLE OF CONTENTS – Continued

Page

II. Certiorari Should Be Granted To Allow This Court To Establish Under What Circumstances If Any A Circuit Court May Ignore Precedent Decision Directly Relevant To And Binding Upon An Asylum Claim 11

CONCLUSION 12

APPENDIX INDEX

Panel Decision dated February 1, 2010 ..... App. 1

Order Granting Rehearing dated February 1, 2010 ..... App. 4

Panel Decision dated October 21, 2009 ..... App. 5

Decision of BIA dated October 13, 2006 ..... App. 8

Decision of BIA dated March 23, 2007 ..... App. 18

Written Order of Immigration Judge dated September 8, 2005 ..... App. 21

Oral Decision of Immigration Judge dated September 8, 2005 ..... App. 38

TABLE OF AUTHORITIES

Page

CASES

Farah v. Ashcroft, 348 F.3d 1153 (9th Cir. 2003).....10

Gafoor v. INS, 231 F.3d 645 (9th Cir. 2000) 11, 12

Kamalthas v. INS, 251 F.3d 1279 (9th Cir. 2000).....10

Maharaj v. Gonzalez, 450 F.3d 961 (9th Cir. 2006) 11

Narayan v. Ashcroft, 384 F.3d 1065 (9th Cir. 2004) 11

Prasad v. INS, 47 F.3d 336 (9th Cir. 1995).....11

Surita v. INS, 95 F.3d 814 (9th Cir. 1996).....11

Toufghi v. Mukasey, 538 F.3d 988 (9th Cir. 2008) 1, 2, 9

Wakkary v. Holder, 558 F.3d 1049 (9th Cir. 2009) 10

CONSTITUTIONAL PROVISIONS

U.S. Const. Art. 2, Section 8.....3

U.S. Const. Art. 3, Section 2.....3

U.S. Const. Amend. V.....3

STATUTES, RULES AND REGULATIONS

Section 101(a)(42) of the Immigration & Nationality Act [8 U.S.C. § 1101(a)(42)(a)].....3

Section 208 of the Immigration & Nationality Act [8 U.S.C. § 1158].....3

TABLE OF AUTHORITIES – Continued

Page

Section 208(b)(1) of the Immigration & Nationality Act [8 U.S.C. § 1158(b)(1)] 3

Section 241(b)(3) of the Immigration & Nationality Act [8 U.S.C. § 1231(b)(3)] 4

28 U.S.C. § 1254 2

8 C.F.R. § 1208.16(c)(3) 4

8 C.F.R. § 1208.16(d)(2) 4

8 C.F.R. § 1208.16(d)(3) 4

8 C.F.R. § 1208.17(a) 3, 4

Supreme Court Rule 13.3 2

Supreme Court Rule 29.4 4

OTHER AUTHORITIES

Convention Against Torture (CAT) ..... *passim*

INTRODUCTION

The October 21, 2009 Panel decision found that the adverse credibility finding by the immigration judge (IJ) was supported by the omission from the written asylum application of the rape and Petitioner's brother's arrest and beating, to which she testified to at the hearing, and by inadequate explanations for said omissions. (App. 6). Based on the adverse credibility findings, the asylum and withholding claims failed. (App. 6). The Panel also found that since the CAT (Convention Against Torture) claims were based on the same statements found not credible, and there was no other evidence in the record to compel a different conclusion, that claim also failed. (App. 6).

Petitioner had filed a motion to reopen with the BIA while her petition for review of the BIA denial of asylum was pending. The motion was based upon the recent coup in Fiji and reports to Petitioner of abuses against Indians. The Board denied the motion to reopen on credibility and sufficiency of evidence grounds. The Panel upheld the denial of Petitioner's motion to reopen on the grounds that the prior adverse credibility finding allowed the Board to reject the evidence as insufficient. (App. 6-7). The Panel cited *Toufghi v. Mukasey*, 538 F.3d 988 (9th Cir. 2008) in which an applicant for asylum was discovered to be falsely claiming to be a Christian and then later moved to reopen based on anti-Christian actions in his home country and in that case the Court had held that since he was not a Christian the new evidence was irrelevant.

The Panel also found that there was no due process violation in the Board's denial of a "motion to continue" although the motion was to reopen.

On February 1, 2010, in response to Petitioner's petition for rehearing, the Panel vacated the October 21, 2009 opinion and issued a revised opinion.

In its new decision, the Panel simply removed reference to *Toufghi* and replaced it with reference to cases holding that a motion to reopen may be denied for failure to make out a prima facie case for relief. The Panel again referred to a "motion to continue."

STATEMENT OF BASIS FOR JURISDICTION

The circuit court denied Petitioner's petition for review on October 21, 2009 (App. 1-3). A timely petition for rehearing was filed and it was granted on February 1, 2010 (App. 4) along with a new decision which was effectively the same as the prior decision (App. 1-3). This Court retains jurisdiction for a petition for writ of certiorari pursuant to 28 U.S.C. § 1254 and Supreme Court Rule 13.3 as this petition for writ of certiorari is filed within 90 days of the second decision.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Jurisdiction by this Court over the subject matter in question is found in Article 3, Section 2, of the Constitution extending judicial power to all cases arising under the Constitution and the Laws of the United States; Article 2, Section 8, grants Congress the exclusive authority to establish law governing naturalization. Additional authority is found in Amendment 5 of the Constitution which guarantees due process of law to all persons within the United States. The specific statutes at issue here are sections 208 [8 U.S.C. § 1158] and 241(b)(3) [8 U.S.C. § 1231(b)(3)] of the Immigration and Nationality Act (The Act) and 8 C.F.R. § 1208.17(a). Section 208(b)(1) of the Act states that "The Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Attorney General under this section if the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(a) of this title." That latter section defines a refugee as

> . . . any person who is outside any country of such person's nationality, or in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to avail him or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

Section 241(b)(3) states that " ... the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." 8 C.F.R. § 1208.17(a) [Grant of Deferral of Removal] reads that "An alien who: has been ordered removed; has been found under § 1208.16(c)(3) to be entitled to protection under the Convention Against Torture; and is subject to the provisions for mandatory withholding of removal under § 1208.16(d)(2) or (d)(3), shall be granted deferral of removal to the country where he or she is more likely than not to be tortured."

The Solicitor General of the United States has been notified pursuant to Rule 29.4, as well as the Attorney General of the United States.

INTRODUCTION AND STATEMENT OF THE CASE

Petitioner is a sixty-eight year old citizen and national of Fiji and of Indian ethnicity who practices the Hindu religion. She entered the United States on a tourist visa on September 1, 1989. She filed an affirmative application for political asylum on or about November 21, 1989. She was interviewed on May 12, 1999. She was placed into removal proceedings by way of a Notice to Appear dated September 3, 2002 and renewed her application for asylum, as well as

seeking restriction on removal, and relief under the Convention Against Torture (CAT). Her individual hearing was conducted before the immigration judge (IJ) on September 8, 2005 and the IJ denied all of her applications. She filed a timely appeal to the Board of Immigration Appeals (Board or BIA) which dismissed her direct appeal on October 13, 2006. She sought review before the circuit court in Case No. 06-75199. While that petition was pending, she filed a motion to reopen based upon a recent coup in Fiji. The Board denied the motion on March 23, 2007, and Petitioner sought review of that decision before the circuit court in Case No. 07-71348. The circuit court consolidated the two matters, and on October 21, 2009, the Panel denied the petition as to both the direct review of the denial of relief and the denial of the motion to reopen.

Petitioner sought rehearing before the panel, and on February 1, 2009, the Panel granted the petition for rehearing and simultaneously issued a new decision which was effectively the same as the prior decision.

IMMIGRATION JUDGE'S DECISION AND FACTUAL FINDINGS

A. Relevant Evidence

At the individual hearing on her applications, Petitioner testified that she was an Indian and a Hindu who had been born and raised in Fiji. She stated that she suffered from Post Traumatic Stress

Depression (PTSD) caused by past incidents and for which she received medical treatment.

Petitioner testified that her brother had been a member of one of the Fijian political parties and now lived in Australia. The Fijian army had threatened him with death and had burned his sugar fields. The army also threw stones at her brother's house and arrested and beat him. He was also arrested because he had assisted this political party. Petitioner witnessed his arrest and he was released two weeks later, at which point he went into hiding and fled to Australia. After this happened, her mother was beaten by armed soldiers demanding to know the brother's whereabouts. The family also experienced racist slogans written on the walls of the home and would be cursed and told to leave Fiji. Petitioner also testified that while taking her mother to the hospital, they were attacked by Fijians who held them at knife point and physically assaulted and robbed them. Petitioner was struck on the ear and now requires a hearing aid. The attackers threatened to kill her brother and told them to leave Fiji so that native Fijians could take their house. On another occasion, native Fijians entered the house with guns and threw their Hindu religious items, stating that they should become Christians.

Petitioner's mother eventually died and shortly afterward Petitioner was attacked by three Fijians from the army, who came to her home, demanded to know where her brother was, and threatened to kill her. She was beaten and raped. After the rape, she

moved in with a friend in a different location, which was near an army camp. She left that friend's house because soldiers would spy on them and demand money. Petitioner left Fiji two months later and was informed months before the hearing that inquires about her and her brother were still being made.

B. IJ Decision

The immigration judge found Petitioner lacked credibility due to discrepancies between her written application and her testimony. The IJ found that her written application did not refer to the rape or the beatings, mistreatment by the army, or her brother's arrest. The IJ also found the testimony of her doctor, who testified, to be incredible. The IJ thus denied asylum and restriction and with regard to CAT found that the State Department reports did not establish a clear probability of her being tortured if returned to Fiji.

BIA DECISION ON DIRECT APPEAL

The Board of Immigration Appeals reviewed the immigration judge's findings and upheld the adverse credibility finding on the same grounds (App. 10). The Board then stated that both agreed with the IJ that the documentary evidence submitted by Petitioner did not corroborate her claims (App. 11). The Board agreed with the IJ that Petitioner failed to establish past persecution or future persecution

(App. 14-15). The Board also found that she had not established a CAT claim (App. 15).

BIA DECISION ON MOTION TO REOPEN

The BIA denied Petitioner's motion to reopen which she had made on the basis of changed country conditions following yet another coup in which native Fijians controlled the country and maintained laws favoring native Fijians at the expense of Indo-Fijians (App. 19-20). The Board found that Petitioner's claims of crimes committed against Indo-Fijians, in a declaration, were unsubstantiated based on the IJ's prior adverse credibility finding (App. 20). The Board also found that the documents submitted with the motion failed to establish any violence against ethnic Indians (App. 20).

REASONS FOR GRANTING CERTIORARI

As is expanded upon in the arguments below, certiorari should be granted in this case so that the Court may establish consistent guidelines for adjudicating the relationship between a prior adverse credibility finding and a motion to reopen which is based on changed country conditions. Additionally, this Court should grant certiorari to determine whether a circuit court panel may disregard precedent decisions governing established facts, in this case, the official government discrimination against Indo-Fijians and

the history of violence against them since the 1987 coup.

ARGUMENT

I. CERTIORARI SHOULD BE GRANTED TO ESTABLISH WHEN IF EVER A PRIOR ADVERSE CREDIBILITY FINDING MAY BE THE BASIS FOR DENYING A MOTION TO REOPEN BASED UPON CHANGED COUNTRY CONDITIONS, PARTICULARLY AS THE CHANGED CIRCUMSTANCES APPLIES TO A CAT CLAIM

In the petition for panel rehearing, Petitioner argued that the *Toufghi* case was irrelevant as this was not a case where Petitioner's ethnicity or religion was doubted, and also argued that in view of the recent coup which was an established fact, as was the anti-Indian Hindu character of the government since the 1987 coup, Petitioner's credibility at the 2005 hearing was irrelevant. Petitioner also argued that CAT relief was distinctly different from asylum and restriction.

In its revised decision, the Panel continued to base the denial of the motion to reopen upon a prior adverse credibility finding. By replacing the cases cited to support the determination, the Panel did not at all enlighten any party or future reviewing court as to why it believed that the adverse credibility finding was relevant to the recent coup in Fiji. This is of

particular significance in the CAT claim, which is mandatory and is not subject to a discretionary denial as punishment for a prior adverse credibility finding. As is noted below, the Ninth Circuit has repeatedly found the situation for Indo-Fijians to be desperate and has found that the pattern of abuse often rises to persecution.

The Ninth Circuit has held that an adverse credibility finding on asylum does not preclude other forms of relief, which would include CAT. *See Kamalthas v. INS*, 251 F.3d 1279, 1284 (9th Cir. 2000). The Ninth Circuit has further held that denial of a CAT claim based on adverse credibility findings on an asylum application are appropriate only where the CAT claim is based on the very same evidence. *Farah v. Ashcroft*, 348 F.3d 1153, 1157 (9th Cir. 2003).

In *Wakkary v. Holder*, 558 F.3d 1049, 1068 (9th Cir. 2009), the Court held that "[t]he CAT regulations cast a wide evidentiary net, providing that all evidence relevant to the possibility of . . . torture should be considered, including but not limited to, . . . evidence of gross, flagrant or mass violations of human rights within the country of removal."

Here, as is noted below, the same Court has repeatedly found such flagrant violations of human rights to be ongoing and unrelenting. There is a twenty-three year history of discrimination, persecution and violence against Indo-Fijians which is not dependent upon the testimony of any one person. The arguments that the recent coup may actually be

beneficial to Indo-Fijians, asserted by the Board in their denial decision (App. 20) flies in the face of history and logic and is perhaps the most incredible statement made in these proceedings.

II. CERTIORARI SHOULD BE GRANTED TO ALLOW THIS COURT TO ESTABLISH UNDER WHAT CIRCUMSTANCES IF ANY A CIRCUIT COURT MAY IGNORE PRECEDENT DECISION DIRECTLY RELEVANT TO AND BINDING UPON AN ASYLUM CLAIM

In denying the motion to reopen, the Board found that the evidence did not support a finding of a pattern of discrimination against Indo-Fijians (App. 20). However, the very same circuit had held on numerous occasions that there is indeed such a pattern, which often rises to persecution. *See Prasad v. INS*, 47 F.3d 336 (9th Cir. 1995); *Surita v. INS*, 95 F.3d 814 (9th Cir. 1996); *Gafoor v. INS*, 231 F.3d 645 (9th Cir. 2000); *Narayan v. Ashcroft*, 384 F.3d 1065 (9th Cir. 2004) at fn.2; *Maharaj v. Gonzalez*, 450 F.3d 961 (9th Cir. 2006).

In *Narayan*, *supra*, the circuit court held that

> Fiji has experienced a series of violent military takeovers, engendered by the resentment of ethnic Fijians against the descendants of East Indian slaves brought to the island nation in the 1800's. Ethnic Fijians control the police and the military; Indo-Fijians dominate commerce and have

recently gained an electoral majority. *See Gafoor v. INS*, 231 F.3d 645, 648-50 (9th Cir. 2000).

The documentary materials submitted with the motion to reopen clearly presented such patterns as continuous since the first coup in 1987, including overthrowing a government with an elected Prime Minister who was Indo-Fijian.

CONCLUSION

For the reasons set forth herein, the petition for writ of certiorari should be granted.

Dated: March 30, 2010 at San Francisco, CA

Respectfully submitted,

LAW OFFICES OF
STEPHEN SHAIKEN
STEPHEN SHAIKEN, ESQ.
Member, U.S.
Supreme Court Bar

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SATYA WATI, Petitioner, v. ERIC H. HOLDER Jr., Attorney General, Respondent.	Nos. 06-75199 07-71348 Agency No. A070-345-157 MEMORANDUM* (Filed Feb. 1, 2010)

On Petitions for Review of Orders of the Board of Immigration Appeals

Submitted October 13, 2009**

Before: B. FLETCHER, LEAVY, and RYMER, Circuit Judges.

In these consolidated petitions, Satya Wati, a native and citizen of Fiji, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing her appeal from an immigration judge's decision denying her application for asylum, withholding of removal and protection under the Convention Against Torture ("CAT"), and the BIA's order denying

---

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

her motion to reopen. We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence findings of fact, *Chebchoub v. INS*, 257 F.3d 1038, 1042 (9th Cir. 2001), de novo constitutional violations, and for abuse of discretion the denial of a motion to reopen, *Lin v. Ashcroft*, 377 F.3d 1014, 1023 (9th Cir. 2004). We deny both petitions for review.

Substantial evidence supports the BIA's adverse credibility finding based on the omission from Wati's asylum application of her beating, rape and interrogation by Fijian natives and its omission of her brother's arrest and beating, *see Li v. Ashcroft*, 378 F.3d 959, 962 (9th Cir. 2004), and based on Wati's failure to explain these the omissions when given the opportunity, *see Kaur v. Gonzales*, 418 F.3d 1061, 1066-67 (9th Cir. 2005). Accordingly, in the absence of credible testimony, Wati's asylum and withholding of removal claims fail. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Because Wati's CAT claim is based on the same statements found to be not credible, and she does not point to any other evidence in the record that compels the conclusion that it would be more likely than not that she would be tortured if returned to Fiji, substantial evidence supports the BIA's denial of CAT. *See id.* at 1156-1157.

The BIA did not abuse its discretion in denying Wati's motion to reopen because it considered the record and acted within its broad discretion in determining that the evidence was insufficient to warrant

reopening given the adverse credibility determination. *See Malhi v. INS*, 336 F.3d 989, 994 (9th Cir. 2003) (upholding denial of motion to remand to adjust status where applicant failed to make out a prima facie case of eligibility for relief); *Cano-Merida v. INS*, 311 F.3d 960, 966 (9th Cir. 2002). It follows that the BIA did not violate Wati's due process rights by denying her motion to continue. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error and prejudice for a due process violation).

PETITIONS FOR REVIEW DENIED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SATYA WATI, Petitioner, v. ERIC H. HOLDER Jr., Attorney General, Respondent.	Nos. 06-75199 07-71348 Agency No. A070-345-157 ORDER (Filed Feb. 1, 2010)

Before: B. FLETCHER, LEAVY, and RYMER, Circuit Judges.

Wati's petition for panel rehearing is granted. The memorandum disposition filed on October 21, 2009 is withdrawn. A replacement memorandum disposition will be filed concurrently with this order.

No further filings shall be accepted in this closed case.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SATYA WATI, Petitioner, v. ERIC H. HOLDER Jr., Attorney General, Respondent.	Nos. 06-75199 07-71348 Agency No. A070-345-157 MEMORANDUM* (Filed Oct. 21, 2009)

On Petitions for Review of Orders of the Board of Immigration Appeals

Submitted October 13, 2009**

Before: B. FLETCHER, LEAVY, and RYMER, Circuit Judges.

In these consolidated petitions, Satya Wati, a native and citizen of Fiji, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing her appeal from an immigration judge's decision denying her application for asylum, withholding of removal and protection under the Convention Against Torture ("CAT"), and the BIA's order

---

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

denying her motion to reopen. We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence findings of fact, *Chebchoub v. INS*, 257 F.3d 1038, 1042 (9th Cir. 2001), de novo constitutional violations, and for abuse of discretion the denial of a motion to reopen, *Lin v. Ashcroft*, 377 F.3d 1014, 1023 (9th Cir. 2004). We deny both petitions for review.

Substantial evidence supports the BIA's adverse credibility finding based on the omission from Wati's asylum application of her beating, rape and interrogation by Fijian natives and its omission of her brother's arrest and beating, *see Li v. Ashcroft*, 378 F.3d 959, 962 (9th Cir. 2004), and based on Wati's failure to explain these the omissions when given the opportunity, *see Kaur v. Gonzales*, 418 F.3d 1061, 1066-67 (9th Cir. 2005). Accordingly, in the absence of credible testimony, Wati's asylum and withholding of removal claims fail. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Because Wati's CAT claim is based on the same statements found to be not credible, and she does not point to any other evidence in the record that compels the conclusion that it would be more likely than not that she would be tortured if returned to Fiji, substantial evidence supports the BIA's denial of CAT. *See id.* at 1156-1157.

The BIA did not abuse its discretion in denying Wati's motion to reopen because it considered the record and acted within its broad discretion in determining that the evidence was insufficient to

warrant reopening given the adverse credibility determination. *See Toufighi v. Mukasey*, 538 F.3d 988, 996-97 (9th Cir. 2008) (credibility findings regarding asylum claims render new evidence immaterial). It follows that the BIA did not violate Wati's due process rights by denying her motion to continue. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (requiring error and prejudice for a due process violation).

PETITIONS FOR REVIEW DENIED.

[SEAL] **U.S. Department of**
Executive Office for Immigration Review
Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Obayemi, Olumide K.
1290 B Street, Ste. 116
Hayward, CA 94541-0000

Office of the District Counsel/SFR
P.O. Box 26449
San Francisco, CA 94126-6449

Name: WATI, SATYA **A70-345-157**

Date of this notice: 10/13/2006

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

/s/ Donna Carr
Acting Chief Clerk
Donna Carr

Enclosure

Panel Members:
MOSCATO, ANTHONY C.

U.S. Department of Justice
Executive Office for
Immigration Review

Falls Church, Virginia 22041

Decision of the Board of
Immigration Appeals

File: A70 345 157 – San Francisco Date: Oct. 13, 2006

In re: SATYA WATI

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF
OF RESPONDENT: Olumide K. Obayemi, Esquire

ON BEHALF
OF DHS: Marty D. Ryan
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] – In the United States in violation of law

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Fiji, appeals from the Immigration Judge's September 8, 2005, decision denying her applications for asylum under section 208 of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1158, withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3), and protection under the Convention Against Torture. The appeal is dismissed.

On appeal, the respondent argues that the Immigration Judge erred in finding that she was not

credible and that she otherwise failed to meet her burden of proof. The respondent contends that she established past persecution and a well-founded fear and clear probability of persecution based on her Indian ethnicity, her Hindu religion, imputed political opinion based on her brother's membership in the Fijian Labor Party ("FLP"), and her familial connection to a member of the FLP. The respondent further contends that the Immigration Judge erred in finding that she failed to meet her burden of proof for protection under the Convention Against Torture.

Turning to the issue of credibility, we find that the Immigration Judge's adverse credibility finding is not clearly erroneous. *See* 8 C.F.R. § 1003.1(d)(3)(i); *See also Matter of A-S-*, 21 I&N Dec. 1106 (BIA 1998). Specifically, the Immigration Judge based her adverse credibility finding on inconsistencies within the respondent's testimony, inconsistencies between the respondent's testimony and her documentary evidence, and inconsistencies between the respondent's testimony and that of her doctor (I.J. at 5-12). We find significant that the respondent testified that she was raped, beaten, and interrogated by the Fijian army and that she was beaten and harassed by Fijian natives because her brother was a member of the FLP (I.J. at 3-4, 7; Tr. at 25-30, 71-73), whereas in her declaration attached to her asylum application, she only described incidents of violence that happened to strangers or acquaintances in Fiji and stated that her temple in Fiji had been burned and that she and her brother had been robbed by native Fijians (Exh. 2).

Similarly, in contrast to her testimony, the respondent indicated in her application for asylum that neither she nor any member of her family belonged to any organizations in Fiji and that she had not been detained, interrogated, convicted, sentenced, or imprisoned in Fiji (Exh. 2). The respondent also testified that her brother was arrested and beaten by the Fijian army (I.J. at 6-7; Tr. at 24-25), but she made no mention of this in her declaration (Exh. 2). Moreover, the respondent's testimony was also inconsistent with that of her doctor who testified that he thought that the respondent told him that she was physically molested in Fiji, not raped, and that her alleged persecution was because of her membership in the FLP, not her brother's membership in the party (I.J. at 3-5; Tr. at 91-94).[1] We find that these

---

[1] While we rely on the inconsistencies between the respondent's testimony and that of her doctor to support the Immigration Judge's finding that the respondent's testimony was not credible, we find it unnecessary to reach the Immigration Judge's finding that the doctor's testimony was also not credible (I.J. at 3-5). The respondent has not established that the doctor's testimony, even if credited, supports her asylum and withholding of removal claims.

Moreover, we note that there is some confusion in the record surrounding the doctor's testimony. The doctor testified that he recalled that the respondent told him that she was physically molested in Fiji, not sexually molested (I.J. at 4; Tr. at 93). When asked, however, what the respondent's traumatic event was in Fiji that caused the doctor to diagnose her with Post Traumatic Stress Disorder, the doctor testified that the respondent was sexually abused (Tr. at 93). The Immigration Judge found that the doctor only testified that the respondent was

(Continued on following page)

inconsistencies are not minor and that they go to the heart of the respondent's asylum and withholding of removal claims. *See Chebchoub v. INS*, 257 F.3d 1038, 1043 (9th Cir. 2001) (finding that the petitioner's inconsistent testimony about the events leading up to his departure from Morocco and the number of times he was arrested went to the heart of the petitioner's asylum claim and supported the Immigration Judge's adverse credibility finding).

We further find that the respondent has failed to provide convincing explanations for these inconsistencies. *See Singh v. Gonzales,* 439 F.3d 1100, 1106 (9th Cir. 2006) (concluding that the Immigration Judge must consider and address explanations given for any discrepancies or inconsistencies that form the basis of a denial of asylum); *Matter of A-S-, supra.* The respondent claimed that she did not mention her alleged rape in her application for asylum because of the shame associated with rape in her culture (I.J. at 7; Tr. at 74). While we recognize that the respondent may have been reluctant to reveal that she was raped early in her asylum application process, we nonetheless find that this explanation is not sufficient given that the Immigration Judge gave the respondent an opportunity to amend her application for asylum during the hearing but she failed to do so and the respondent swore to the contents of her application

---

physically molested and the respondent did not challenge this factual finding (I.J. at 4).

for asylum by signing it in the presence of the Immigration Judge (I.J. at 11; Tr. at 16-17, 64). *Contra Paramasamy v. Ashcroft*, 295 F.3d 1047, 1052-53 (9th Cir. 2002) (finding that an Immigration Judge's adverse credibility finding was not supported based on the petitioner's failure to indicate in her initial interview before the asylum office that she had been sexually abused where the petitioner testified that she did not reveal the alleged abuse at the initial interview because the interviewer was male). Similarly, although the respondent claimed that she did not mention that her brother was a member of the FLP or that he had been arrested and beaten by the Fijian army in her application for asylum because she was scared and did not want anyone to know that any members of her family were associated with the FLP (I.J. at 6-7; Tr. at 64), she did not amend her application for asylum to include these facts even though she was given an opportunity to do so (I.J. at 7; Tr. at 63-64). We find that the respondent's explanations fail to explain why she swore to an application before the Immigration Judge that was neither accurate nor representative of her claims.

We also agree with the Immigration Judge's finding that the respondent's documentary evidence does not clarify the inconsistencies discussed above (I.J. at 12-13). *See Li v. Ashcroft*, 378 F.3d 959, 964 (9th Cir. 2004) (finding that since the Immigration Judge had a basis for doubting the respondent's credibility, the Immigration Judge properly considered whether the evidence of record corroborated the respondent's claim).

The respondent provided numerous letters and declarations from acquaintances, but most of this evidence was either too vague or inconsistent to corroborate the respondent's claim. Although the letter from the respondent's acquaintance, Jasmine Mehsuria Kumar, supported some of the respondent's assertions, the letter provided no basis for how Ms. Kumar learned about the respondent's alleged persecution (I.J. at 13; Exh. 3E). *See Mejia-Paz v. INS,* 111 F.3d 720, 723-24 (9th Cir. 1997) (finding that an affidavit indicating that the petitioner was a Jehovah's Witness was insufficient corroboration because it was unsupported by explanation or corroborative facts relating to the affiant's knowledge of the petitioner's religion).

Since we find that the abovementioned inconsistencies support the Immigration Judge's adverse credibility finding, we find it unnecessary to reach whether the other inconsistencies identified by the Immigration Judge also support her adverse credibility finding. *See generally Wang v. INS,* 352 F.3d 1250, 1259 (9th Cir. 2003) (finding that "[s]o long as one of the identified grounds is supported by substantial evidence and goes to the heart of [the respondent's] claim of persecution, we are bound to accept the IJ's adverse credibility finding") (citations omitted).

To the extent that the respondent claims on appeal that people from her community in Fiji have informed her that her life will still be in danger if she returns to Fiji, we find that the respondent has failed to present sufficient facts to establish a well-founded

fear or clear probability of persecution on this basis. *See generally INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987); *INS v. Stevic*, 467 U.S. 407 (1984). Specifically, the respondent did not establish how these people from her community learned of the alleged continuing threat against her life or who is still threatening her life. The respondent also argues on appeal that the Fijian military and Fijian natives have engaged in a pattern or practice of persecuting Indian Fijians, but we find that the respondent has not established through credible testimonial or documentary evidence that such a pattern or practice exists in Fiji. *See* 8 C.F.R. § 1208.13(b)(2)(iii). Moreover, to the extent that the respondent argues on appeal that she could not reasonably relocate in Fiji, we note that the Immigration Judge did not make an internal relocation finding and we need not reach this issue because we find that the respondent failed to meet her burden of proof for asylum and withholding of removal without regard to the issue of internal relocation.

Finally, we agree with the Immigration Judge's finding that the respondent failed to meet her burden of proof for protection under the Convention Against Torture.[2] Specifically, we agree that the respondent

---

[2] We note that the Immigration Judge indicated that the respondent's Request for Asylum in the United States (Form I-589) did not constitute an application for protection under the Convention Against Torture because the application was filed prior to the enactment and implementation of the regulations relating to protection under the Convention Against Torture. *See*

(Continued on following page)

did not establish a clear probability of torture if she is returned to Fiji. *See* 8 C.F.R. § 1208.16(c)(2). As acknowledged by the Immigration Judge, while the country report indicates that there is still ethnic tension in Fiji between Indian-Fijians and native Fijians, the respondent has not established through documentary or testimonial evidence that there is systematic torture of Indian-Fijians by or with the acquiescence of the Fijian government (I.J. at 14; Exh. 4A). Similarly, although the report indicates that rape is a major problem in Fiji, the respondent has not established through documentary or testimony evidence that it is committed by members of the Fijian government or with the acquiescence of the Fijian government. (I.J. at 14; Exh. 4A). *See Zhang v. Ashcroft*, 388 F.3d 713, 721-22 (9th Cir. 2004) (finding that country conditions do not compel a finding that the petitioner would be tortured by or with the acquiescence of the Chinese government). Accordingly, we find that the respondent is not eligible for protection under the Convention Against Torture.

ORDER: The appeal is dismissed.

---

8 C.F.R. § 1208.16(c)(1). The Immigration Judge nonetheless alternatively determined that the respondent failed to meet her burden of proof for protection under the Convention Against Torture. As the respondent specifically requests consideration of her application under the Convention Against Torture on appeal, we have considered the respondent's Convention Against Torture claim on its merits.

FURTHER ORDER: Pursuant to the Immigration Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge and the statute, the respondent is permitted to voluntarily depart from the United States, without expense to the Government, within 60 days from the date of this order or any extension beyond that time as may be granted by the Department of Homeland Security (DHS). *See* section 240B(b) of the Immigration and Nationality Act; 8 C.F.R. §§ 1240.26(c), (f). In the event the respondent fails to so depart, the respondent shall be removed as provided in the Immigration Judge's order.

NOTICE: If the respondent fails to depart the United States within the time period specified, or any extensions granted by the DHS, the respondent shall be subject to a civil penalty of not less than $1,000 and not more than $5,000, and shall be ineligible for a period of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Immigration and Nationality Act. *See* section 240B(d) of the Act.

/s/ Anthony C. Moscato
FOR THE BOARD

[SEAL] **U.S. Department of Justice**
Executive Office for Immigration Review
Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Shaiken, Stephen, Esquire
170 Columbus Avenue,
Suite 100
San Francisco, CA
94133-5102

Office of the District
Counsel/SFR
P.O. Box 26449
San Francisco, CA
94126-6449

Name: WATI, SATYA **A70-345-157**

Date of this notice: 03/23/2007

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

/s/ Donna Carr
Donna Carr
Acting Chief Clerk

Enclosure

Panel Members:
PAULEY, ROGER

U.S. Department of Justice
Executive Office for
Immigration Review

Falls Church, Virginia 22041

Decision of the Board of
Immigration Appeals

File: A70-345-157-San Francisco Date: Mar. 23, 2007

In re: WATI, SATYA

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF
OF RESPONDENT: Stephen Shaiken, Esquire

ORDER:

PER CURIAM. The respondent moves the Board pursuant to 8 C.F.R. § 1003.2 to reopen our decision dated October 13, 2006. The respondent, an ethnic Indian citizen of Fiji, seeks reopening of her asylum claim based upon the December 2006 coup in Fiji. Motions for reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty,* 502 U.S. 314 (1992). Relevant considerations include the desirability of finality in proceedings, the undesirability of extending the length of proceedings, and the individual circumstances of an alien's case. Taking into account all these factors, we do not find this to be an appropriate case for a discretionary grant of the request to reopen or remand. *See Matter of L-O-G-,* 21 I&N Dec. 413 (BIA 1996) (noting the Board's broad discretion to grant or deny motions to reopen). Most

critically, the proffered evidence fails to establish the respondent's prima facie eligibility for asylum or any other form of relief from removal. *See INS v. Abudu*, 485 U.S. 94, 104 (1988). Although the respondent's own affidavit claims that crimes have been committed against ethnic Indians by ethnic Fijians in the wake of the coup, the respondent's unsubstantiated assertions carry little weight in light of the adverse credibility finding in her case. Additionally, the proffered news reports regarding the December coup make no mention of any violence perpetrated against the Indian minority. Indeed, these reports discuss a palpable level of support among ethnic Indians due to the perception that the former government's policies discriminated against the minority community. *See* Respondent's Motion at Tabs A, B. Accordingly, the motion is denied.

/s/ Roger Pauley
FOR THE BOARD

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
IMMIGRATION COURT
San Francisco, California

File A 70 345 157 September 8, 2005

In the Matter of

SATYA WATI,)
) IN REMOVAL PROCEEDINGS
Respondent)

CHARGES: Section 237(a)(1)(B) overstayed a non-immigrant visa status.

APPLICATIONS: Asylum, withholding of removal.

ON BEHALF OF RESPONDENT:

Olumide Obayemi, Esquire
1290 B Street, Suite 116
Hayward, California 94541

ON BEHALF OF IMMIGRATION AND CUSTOMS ENFORCEMENT:

Marty D. Ryan, Esquire
Deborah K. Goodwin, Esquire
Assistant Chief Counsels
550 Kearney Street, 10th Floor
San Francisco, California 94108

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is an adult female native and citizen of Fiji. On September 3, 2002, the then

Immigration and Naturalization Service, now Immigration and Customs Enforcement of the Department of Homeland Security, issued a Notice to Appear in removal proceedings to the respondent, Exhibit 1. The Notice to Appear alleges that respondent has been admitted to the United States, but is deportable for having overstayed her non-immigrant visa status. The Court notes that sort of inexplicably allegation 2 alleges that respondent is a native of Fiji and a citizen of India. Respondent denied the citizenship allegation but admitted the nativity allegation. I believe that it is respondent's contention that she is both a native and citizen of Fiji and that seems to be borne out by the testimony in the case.

On October 31, 2002, the respondent entered pleadings. She admitted all allegations with the exception of that citizenship allegation and conceded removability. At that time she declined to designate a country for removal and based on her admission of Fijian nativity, the Court directed Fiji as the country for removal should that become necessary.

Based on respondent's admissions and her concession of removability, I find that removability has been established by clear and convincing evidence. In lieu of removal, respondent has applied for asylum and for withholding of removal under the Immigration and Nationality Act. The Court notes that because respondent's application was never filed on the new form, and her application was filed back in 1989, it does not constitute an application for withholding of removal under the United Nations

Convention Against Torture. Nevertheless, the Court will consider whether that form of relief would be appropriate for the respondent.

ANALYSIS AND FINDINGS OF FACT AND LAW

In deciding any asylum case, the Court must first determine the credibility of the witnesses before it. Generally in these cases, the respondent's testimony forms the bulk of the evidence in support of his or her claim for asylum and, therefore, the credibility of that testimony is very important. In this case, the Court heard two witnesses. The respondent herself and a doctor who evaluated her and wrote a very brief letter summarizing his evaluation of the respondent.

In analyzing credibility, the Court considers four factors. Namely the demeanor of the witness, the consistency of his or her testimony both internally and vis-a-vis other witnesses, documents and the application for relief. The plausibility of that testimony and the detail and specificity with which the witness testifies. With regard first to the doctor's testimony, the Court could not evaluate the demeanor of the doctor very well because he testified by telephone as an expert witness. With regard to consistency, the Court notes that his testimony was inconsistent with the respondent's in several respects. First of all, the Court notes that there were certain consistencies between the respondent's testimony and the doctor's. Namely, he confirmed that she had seen him on two occasions and that the total time for the evaluation

consisted of approximately 45 minutes. Nevertheless, the doctor confidently and unequivocally stated that respondent was a supporter of a party that was deposed whereas the respondent herself stated that her brother supported the party and never claimed that she herself supported the party. He also stated that respondent's alleged abuse in Fiji was because of her support of a party which he believed to be the labor party. Whereas the respondent described over and over how the army and native Fijians would come to her and harass her in reference to her brother and his political activities. In that they came looking for him and punished her for not presenting him or giving information about him. Again, she never mentioned being a supporter of the party at all and never mentioned being punished for supporting the party.

In addition, the respondent testified that she was attacked and raped by army officers in her home in Fiji. The doctor's letter indicated that she told him that she was molested while in her native country. When asked whether this meant sexual molestation, the doctor said, no, that he thought it meant only physical harm. He indicated that he did not have his notes in front of him and did not remember for sure whether she reported a rape, but that he did not recall any rape or sexual molestation. Nevertheless, the doctor was able to recall, as I indicated, very confidently that the respondent supported a political party.

The Court finds it implausible that the doctor would not remember whether the respondent told him that she was raped considering the interview with her took place only in August of this year, less than a month ago. And considering that he made a diagnosis of post traumatic stress disorder, which diagnosis is reliant upon a finding of a traumatic event in the past which precipitated the post traumatic stress. Considering the requirement that there be a traumatic experience and the effect of the level of the initial trauma on the diagnosis and extent of the post traumatic stress, the Court finds it completely implausible that the respondent would have told the doctor that she was raped and the doctor would not have remembered that.

With regard to detail and specificity, the Court notes that the doctors diagnosis was sloppy and vague. He was not able to tie the diagnosis to the DSM4 which is the authority on the symptoms required to establish post traumatic stress disorder, but rather vaguely said that he based it "on his interview". It appeared to the Court as if he had diagnosed the depression and then tacked on post traumatic stress disorder to support the respondent's claim that there was a traumatic event, but without even remembering what the traumatic event was supposed to have been.

In sum, the doctor's testimony does not leave the Court with confidence that he carefully evaluated respondent's condition or intelligently considered a diagnosis apart from what was needed to support her

claim. Therefore, the Court finds the doctor's testimony not to be credible and it cannot be given full weight as evidence.

With regard to the respondent's testimony, her demeanor was mostly unremarkable. She did appear to be upset at times and to have appropriate emotional content in her testimony considering the topics she was discussing. Apart from that, her demeanor was basically normal.

There were numerous inconsistencies in the respondent's testimony. Some of those with the doctor's testimony have already been pointed out. A more general inconsistency between the respondent's testimony and the doctor's testimony relates to the focus of her testimony. As indicated, she focuses the reason her alleged persecution on her brother's activities and the army and natives coming after her because of her brother's activities and because of her failure to inform on her brother's whereabouts. In addition, the respondent initially hedged and tried to make it seem as if Doctor Bhandari had been her regular long term doctor. Eventually she then admitted that he had been her doctor only for a couple of months and on cross-examination finally admitted that she had seen him for treatment only two times for a total of approximately 45 minutes. Likewise, she initially tried to make it seem as if she had further treatment scheduled and then when challenged, admitted that she had not made any follow-up appointment yet, but that she planned to do so.

There were also significant inconsistencies between the respondent's testimony and her declaration. In the declaration she does not mention her brother's arrest or that he was beaten by the army. Her explanation that she was frightened to mention this and sick and upset when she first came from Fiji is unconvincing in light of the fact that the respondent even up until the day of the hearing, when she was given an opportunity to do so, never corrected or amended her application to include her brother's arrest and mistreatment. In addition, the respondent does not mention her own rape in the declaration. She indicates that this is due to shame among the Indian community in such instances. The Court considers this to be a plausible explanation but in light of all of the other evidence in the case, probably not the correct explanation. The respondent also does not mention her own arrest and interrogation and mistreatment by the army in her declaration which she testified to in Court. The Court does not consider the respondent's explanation about why she did not mention her brother's arrest to be plausible in light of the fact that she already knew that he had moved safely to Australia at the time when she came to the United States. So there was no reason for her to fear for his safety by revealing information about his arrest and beating. In addition, these events were supposedly known to the army, since they were the alleged perpetrators.

The respondent described in her testimony an incident in which her brother's home was burglarized.

She described it as an incident in which the burglary occurred while he was not at home and that he returned to find his house, having been burglarized, whereas her declaration describes it as if he were home and safely locked in his bedroom at the time when native Fijians burglarized his home and tried unsuccessfully to get into his bedroom. When she was challenged with this inconsistency, she tried to conform her testimony to the declaration by saying that these were two different incidents. This is not plausible as the respondent had already identified the incident as one incident in which $800 was stolen from her brother. This being consistent with what was in the application. Also, when first talking about the incident, she used the term "we" instead of "he" and described the "we" as having come into the house and left things there and then gone back out again before the burglary occurred. This is the same sequence as described in the respondent's declaration in reference to another incident in which the respondent's home was allegedly broken into. This gave the impression that the respondent had poorly memorized and mixed up the facts of the two incidents momentarily. Nevertheless, the Court acknowledges that the respondent was able to describe most of what is contained in the declaration in a relatively detailed and believable manner, though with some differences in the details.

The primary problem with regard to inconsistency in this case is the addition of facts in respondent's testimony that are not and were never contained in the declaration. These are not merely

details which are consistent with, but are additional to what is in the declaration. They are extremely important facts including several additional incidents which were never mentioned in the application or declaration.

The respondent also described certain people in the declaration as relatives, but described them in her testimony as friends. She explained that culturally she would think of close friends as family. This would be a reasonable explanation except that the respondent jumped in with it before a challenge could even be completed. The sequence of testimony at that point was somewhat odd. The explanation is somewhat more plausible in reference to the reference in the declaration to "a relative". Then with regard to the more specific reference in the declaration to a "brother-in-law". In that same vein, when the respondent was asked questions preliminarily leading to challenges of inconsistencies with the declaration. But before any challenge could be completed or even really begun, she would jump in and refer to what was "written in the declaration". And tried to explain the inconsistency away. This occurred in several areas, not only in the reference to relatives as indicated above.

There were also some internal inconsistencies in the respondent's testimony. On cross-examination, the respondent's testimony was inconsistent and confusing as to when the injury occurred to her ear. She indicated at one point that it occurred when she was attacked by native Fijians while taking her mother to

the hospital and at another point indicated that it occurred when she was attacked and raped at home by army soldiers. It took respondent a while on cross-examination to settle on the latter explanation, whereas on direct examination she had clearly stated that the ear injury occurred in the incident in which she was taking her mother to the hospital. Neither of these incidents is described in the respondent's declaration.

There were also some inconsistencies between the respondent's testimony and her documentary evidence. In a letter from a Gyan Singh at Exhibit 3B and 3B-1, Mr. Singh makes it seem as if the respondent left Fiji due to fear from the burning of the village temple which she attended in July of 1987. He makes no mention of personal attacks by natives or the army on respondent. The other letters provided by respondent are generally consistent with her testimony in the sense that there's nothing that contradicts it. However, they are generally uncomprehensive, not detailed and several do not indicate how the author of the letter knows anything about what happened to the respondent. Most refer to aspects of the 1987 coup as the primary cause of the respondent's fear. The exception to this general analysis is the letter from Jasmine Mesuriah Kumara at Exhibit 3E. This is more detailed. It does, however, appear to be at least in part, based upon information given by the respondent to the author, rather than known personally to the author. Nevertheless, to the extent that that information would have been given shortly

after the incidents described, this letter is of more value as evidence than any of the others because of its detail.

The Court has already addressed plausibility as it relates to the respondent's explanations for her inconsistencies. The Court also notes that the complete lack of any reference to the most important and compelling incidents described by respondent in Court in her declaration is implausible considering the respondent was seeking protection from the Government by filing her asylum claim. In addition, she was given plenty of time and at least one specific opportunity in Court to amend her application and she failed to do so. The Court does not find it plausible that these incidents occurred, considering the respondent's complete failure to mention them until after the Asylum Office had referred her claim. This is particularly important considering the respondent's declaration talks about all kinds of incidents happening to strangers and acquaintances, whereas she mentions nothing about what happened to her brother or a certain incidents described in Court as happening to her.

The respondent's testimony was sometimes relatively detailed and specific. At other points, her testimony became very vague and non-specific. The Court notes that she seemed to be very familiar with the contents of her declaration but her manner of testifying about them was, as indicated, somewhat strange. It seemed that the respondent would sort of talk off the top of her head and then realize that some

aspect of what she said was inconsistent with the declaration and start trying to back pedal and explain.

Considering all of the above, the Court cannot find the respondent's testimony to be credible. It may be that certain aspects of what is contained in the respondent's declaration are true. It may even be that certain aspects of what she testified to in Court are true, but there are so many inconsistencies between her declaration and her testimony, between the doctor's testimony and the respondent's, between the respondent's testimony and the documents presented that it is impossible for the Court to sort through and try to determine which aspects of the respondent's claim may or may not have actually occurred. It is the respondent's burden to establish that her testimony is credible and considering the high level of inconsistency in the respondent's testimony, the Court finds that she has failed to meet that burden. Therefore, the Court cannot give full weight to the respondent's testimony.

Since the respondent's testimony and that of her doctor cannot be given full weight, the Court may rely only on documents to establish whether the respondent qualifies for asylum or withholding of removal. As indicated previously, there are certain limitations to all of the documents provided by the respondent. Most of the letters and or declarations are neither detailed enough nor consistent enough with the respondent's testimony, nor comprehensive enough to prove that the things respondent described actually

happened to her. As indicated, many of them described the general chaos after the coup in 1987 and harassment that may indeed have happened back then, but they do not establish that there is any continuing danger to the respondent. As indicated, the exception is the letter of respondent's friend Jasmine. However, because that letter was not subject to cross-examination, it cannot be given full weight in this proceeding, though it will be given more weight than the other letters or than respondent's testimony. The letter does confirm that the respondent stayed with her friend Jasmine while living at Mr. Prasad's residence. During times when Mr. Prasad was not home, because of fear, this seems perfectly reasonable considering there had just been a coup at that time. And the Court presumes that Fijians of Indian descent at that time were often fearful. The letter describes also things that happened to the respondent in Ba, Fiji prior to her moving to Mr. Prasad's residence. But the letter does not describe how Ms. Kumara knows those incidents, nor does the letter address the issue of the reasons on account of which any of these incidents occurred.

In light of all of the evidence in this case, the Court does not believe that Ms. Kumara's letter alone is sufficient to meet respondent's burden of proving that she currently qualifies for asylum in the United States. Therefore, that application must be denied.

Since respondent has failed to establish a well-founded fear of persecution if she returns to Fiji, it follows that she also has failed to establish the more

burdensome standard of the clear probability of persecution for purposes of withholding of removal under the Immigration and Nationality Act.

If the respondent had made an application for withholding of removal under the United Nations Convention Against Torture, the Court would also find that her incredible testimony and the incredible testimony of her doctor and the sometimes inconsistent and often undetailed letters submitted by the respondent are also not sufficient to establish a clear probability of torture if the respondent returned to Fiji. And the Court has also reviewed the only background document submitted in this case, with the exception of some very old newspaper articles from the respondent which were filed with her application and that is the U.S. State Department's Country Report on Human Rights Practices for the year 2004 for the country of Fiji. That document does establish that there are certainly still ethnic tensions in Fiji, Nevertheless, the Court does not believe that these general conditions establish a clear probability that the respondent would be tortured if she returns to Fiji.

With regard to the respondent's most serious allegation that she was raped in Fiji, the report does confirm that rape is a serious problem in Fiji. It also indicates, however, that women have full right in that country in law and practice with property ownership and inheritance. That there are female entrepreneurs and that there is an effort being made, both to increased punishments for rape and to provide

assistance for women who have suffered sexual assaults, including in respondent's home town of Ba.

In addition, the report indicates that police have adopted a no drop rule in cases of domestic violence and rape, but that they are still light sentences in domestic violence cases.

The report also indicates that since the most recent coup in the year 2000, conditions in Fiji have normalized significantly. The Court acknowledges that there have been periodic coups and other times when violence against Indo-Fijians has increased. However, this appears to be a period of relative calm in that country. Therefore, the Court cannot find that based on general conditions, a clear probability of torture exists at this time.

It does appear that respondent is statutorily eligible for voluntary departure and that application will be granted in an exercise of discretion.

For the foregoing reasons, the Court enters the following order:

ORDER

IT IS HEREBY ORDERED that respondent's application for asylum in the United States be and hereby is denied.

IT IS FURTHER ORDERED that respondent's application for withholding of removal under the

Immigration and Nationality Act be and hereby is denied.

IT IS FURTHER ORDERED that respondent be permitted to depart the United States voluntarily so long as she does so by November 7, 2005 or any extension thereof as may be granted by Immigration and Customs Enforcement. And under such conditions as that agency may indicate. Should respondent fail to depart the United States as ordered, then an order for her removal to Fiji shall be entered without any further notice or proceeding.

Furthermore, should respondent fail to depart the United States as ordered, then for a period of 10 years from the date of this order, she shall become ineligible for any relief from removal involving adjustment of status, change of status, voluntary departure, cancellation of removal or registering.

IT IS FURTHER ORDERED that respondent appear the offices of Immigration and Customs Enforcement within five business days of today's date, or by September 15th, 2005 to provide documentation establishing her right to enter a country other than the United States and to post a bond in the amount of $500 to guarantee her departure.

CAROL A. KING
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before CAROL A. KING in the matter of:

SATYA WATI

A 70 345 157

San Francisco, California

was held as herein appears, and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

/s/ Robin Conover
Robin Conover (Transcriber)

Deposition Services, Inc.
6245 Executive Boulevard
Rockville, Maryland 20852
(301) 881-3344

April 27, 2006
(Completion Date)

IMMIGRATION COURT
550 KEARNY ST., SUITE 800
SAN FRANCISCO, CA 94108

In the Matter of Case

Respondent IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on _____.

This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[ ] The respondent was ordered removed from the United States to _____.

[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to _____ or in the alternative to _____.

[X] Respondent's application for voluntary departure was granted until 11/7/05 upon posting a bond in the amount of $ 500.00 by 9/15/05, with an alternative order of removal to Fiji.

[X] Respondent's application for asylum was ( ) granted (X) denied ( ) withdrawn ( ) other.

[X] Respondent's application for withholding of removal was ( ) granted (X) denied ( ) withdrawn ( ) other.

[ ] Respondent's application for cancellation of removal under section 240A(a) was ( ) granted ( ) denied ( ) withdrawn ( ) other.

[ ] Respondent's application for cancellation of removal under section 240A(b) was ( ) granted ( ) denied ( ) withdrawn ( ) other. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.

[ ] Respondent's application for a waiver under section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn ( ) other.

[ ] Respondent's application for adjustment of status under section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn ( ) other. If granted, it was ordered that respondent be issued all appropriate documents necessary to give effect to this order.

[ ] Respondent's status was rescinded under section 246 of the INA.

[ ] Respondent is admitted to the United States as a _____ until _____.

[ ] As a condition of admission, respondent is to post a $ _____ bond.

[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the immigration Judge's oral decision.

[ ] Proceedings were terminated.

[ ] Other: _____

Appeal: [A]/I/B

Appeal due by: 10/11/05

Date: 9/8/05 /s/ Carol A. King

Carol A. King
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL [ ]
PERSONAL SERVICE [X]

TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer
[X] ALIEN'S ATTY/REP [X] INS

DATE: 9/8/05 BY: COURT STAFF /s/ CAK

Attachments: [ ] EOIR-33 [ ] EOIR-28
[ ] Legal Services List [ ] CAK/829/rmb